

VNO

DISPATCH		CLASSIFICATION S E C R E T	PROCESSING ACTION
TO	Chief, Vietnam Operations		MARKED FOR INDEXING
INFO.			NO INDEXING REQUIRED
FROM	Chief of Station, Vietnam		ONLY QUALIFIED DESK CAN JUDGE INDEXING
SUBJECT	PHOENIX/Judicial Processing of VC Civil Suspects		MICROFILM
ACTION REQUIRED - REFERENCES			
<p>A/R: FYI</p> <p>1. Forwarded under separate cover are two packages of memoranda and reports prepared by [] during his recent, extended TDY in Vietnam in support of the PHOENIX program. One of these is intended for VNO and/or other FE purposes, the other should be forwarded to Office of General Counsel.</p> <p>2. A copy of [] final report and recommendations will be sent in separately.</p> <p>3. As before, his services have been very much appreciated. Ambassador Komer, DepCORDS, and Mr. Colby, ACoFS, CORDS, both have called on [] repeatedly for his opinion, or for accomplishment of <u>ad hoc</u> tasks in the general area of legal procedures affecting the arrest, trial, detention and release of VC civil suspects and VC civil detainees.</p> <p>4. Much remains to be done in this field; however, it appears that the solution to the most critical problems of coping with the enormous workload of VC civil detainees lies in the areas of (1) improved administrative and investigative/screening procedures, and (2) expansion and improvement of Police Special Branch capabilities for screening, interrogation, investigation and presentation of evidence or persuasive intelligence to support court trial or judicial processing by the provincial security committee system. And this is a function of manpower and training, as well as of physical facilities.</p> <p>5. In any event, while there will be a need for further work in the legal field, the Station is now of the opinion that this is not properly a [] function. Rather, we would hope to call upon the legal talents of USAID/Public Administration and especially of the MACV Staff Judge Advocate for more substantial support than in the past.</p>			
Attachments u/s/c		DIST: O&I-C/VO, 1-OGC	<div style="border: 1px solid black; padding: 5px;"> GROUP 1 Excluded from automatic downgrading and declassification </div>
CROSS REFERENCE TO	DISPATCH SYMBOL AND NUMBER	DATE	
	[]	26 JUL 1968 22 July 1968	
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13 July 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Release of Detainees - Malaysia and Singapore

1. On a trip to Malaysia and Singapore last month, to examine laws and procedures there for dealing with Communist-inspired insurgency, I looked into the matter of release of detainees. This was at the request of Mr. Colby.
2. Both countries have a policy of releasing political detainees as soon as indications warrant. When a detainee is released prior to completion of the period set out in a detention order, he will usually be released "On Conditions" i.e. with certain restrictions on his activities. He will have cooperated with the authorities by giving a full statement of his past activities (a Security Statement) and associations, and may be required to make a Public Statement of his switch of allegiance from the Communists to the Government. A Public Statement is desired by the Government in the case of important detainees and where some special advantage is expected to result therefrom.
3. In each country there is a well developed program of "Aftercare", aimed at rehabilitating the individual in society and preventing him from backsliding. In Malaysia the policy is not to grant early release to a detainee until housing and employment are arranged for him. The Government may assist in this effort by contacting prospective employers. There is more unemployment in Singapore, so that the employment requirement is not insisted on there.
4. The individual is expected to join the Ex-Political Detainees Association (EPDA), which is a social and mutual assistance organization sponsored by the Government. In Singapore, there is also the Ex-Detainee Aftercare Committee (EDAC), a philanthropic endeavor of private individuals,

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which assists detainees in their rehabilitation by seeking employment for them and giving needed financial assistance. It also helps the Government to monitor the activities of the ex-detainees. In Singapore, some thought is being given to the establishment of an ex-detainee cooperative to engage in the manufacture of shoes. Such an enterprise would only be embarked on if a substantial number of ex-detainees cannot be placed in employment by other means.


5. The early release and Aftercare programs in Malaysia and Singapore have been a notable success, with few instances of backsliding. The involvement of private individuals, in a pro bono publico effort to aid the rehabilitation of political detainees, is particularly to be noted. The situation in Vietnam is not as all analogous to that in the above countries, due to the very high level of subversive activity and insurrection and because of the enormous number of detainees, but the general concepts of the Malaysian and Singaporean programs are applicable.

6. An excellent summary of the program in Singapore was made by the Special Assistant to the Ambassador there and is attached hereto.

7. The cases of political detainees who are incarcerated under a detention order (maximum period of order is two years) must be reviewed at least every twelve months. The Police Special Branch submits to the Advisory Board a report on the matter and its recommendations as to continued detention or release. The Advisory Board reviews the case and makes its recommendations to the Minister charged with internal security responsibility. A quotation from the pertinent provision of the laws of Malaysia (believed to be identical in Singapore) regarding suspension of detention orders and release on conditions is attached hereto. A copy of the form

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used for specifying conditions is also attached.


Legal Counsel

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Attachments

- A. Singapore's Rehabilitation Program
- B. Malaysia-Internal Security Act provisions
- C. Release on Conditions

June 1968

MEMORANDUM FOR:

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SUBJECT: Singapore's Rehabilitation Program
for Political Detainees.

Introduction

1. At this writing, there are somewhat over 200 political detainees in Singapore, divided into three main categories. There are about 110 "Communist" detainees - i.e., cadres of the Barisan Sosialis Party, the Malayan Communist Party, and their affiliates, detained as dangerous to the state. In addition, there are two other categories of detainees not always included in statistics. These include some 90 detainees whose arrests date back to military operations during the period of the confrontation with Indonesia. Also, there are some 30 individuals under detention for violation of Singapore's immigration laws, generally for smuggling Chinese from Indonesia into Singapore. Such offenders are generally detained for periods of less than a year and are handled as detainees only because existing legislation provides only the mildest of penalties for immigration offenses.

2. The Government's philosophy concerning detainees was outlined by the incumbent Defence Minister, Goh Keng Swee, in a speech in August 1966:

After a person has been detained, it is the Government's desire that he should be released as early as possible. It gives nobody any pleasure to see active and energetic young men and women incarcerated for one moment longer than is necessary.

At the same time, we would be guilty of grave dereliction of duty if we were to release detainees before we are assured of their sincere repentance and of their willingness to make a clean break with their past. It is for this reason that we require of them a public statement of their stand. We also require as a condition of release that they make a full statement of their past activities and associations. These statements are made in every case and each of them amounts to a considerable document, sometimes up to 90 type-written foolscap pages, single spacing.

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Once a detainee is released, Government bears no malice towards him. On the contrary, it is our earnest desire that he devote his talents - and in many cases these are men of considerable talent - towards constructive purposes in helping us build a new and better society. In the past, in an informal sort of way, we have helped them to find useful employment either in Government service or in private business.

Although Singapore's practice of political detention has come in for criticism on humanistic grounds, it has proved remarkably efficient. The total number of released detainees was set by Dr. Goh as 156 in August 1966, and is today 170 or more. Yet as far as known, no released detainee has ever resumed left-wing political activity, and thus qualified for re-detention, although there appear to have been a few close calls. By common agreement, the "secret" of the Singapore system is the public recantation described by Dr. Goh. Apart from the psychological impact of such a purging on the individual in question, his public confession calls down on him the most extreme invective from his Barisan ex-colleagues who here, as in so many matters, play into the hands of the Government.

3. A second "secret" of Singapore's success is what might be called preventive maintenance. The occasion for Dr. Goh's speech was the inaugural meeting of the Government's latest mechanism for rehabilitating leftist agitators, the Ex-Detainee Aftercare Committee (EDAC). Only a few weeks before, released political detainees had organized an informal organization of their own, the Ex-Political Detainees Association (EPDA). This was largely social and political, however, and had only a limited capacity to assist in the rehabilitation of ex-detainees. The Aftercare Committee, on the other hand, was viewed by the Singapore Government as performing a basic role in assisting ex-detainees. Whereas the Association was composed of ex-detainees themselves, the Aftercare Committee consisted of sympathetic outsiders.

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The Ex-Detainee Aftercare Committee

4. When the EDAC was established, the Government chose as chairman Dr. Yeoh Chin Sang, a distinguished Singapore surgeon who was subsequently elected to Parliament. The Committee appears to have two main functions. The first, not surprisingly, is to monitor the activities of ex-detainees. Although Special Branch shares this interest, Dr. Yeoh makes no bones of the fact that one role of his committee is to exercise a general supervision over the Ex-Political Detainees Association. The second function of the Committee is that of assistance. This generally takes the form of securing employment for ex-detainees, but in some instances it involves making loans or providing educational assistance. One of Dr. Yeoh's first acts was to get the EPDA out of the fund-raising business, having discovered that the ex-detainees were shaking down business firms for money and jobs. Dr. Yeoh has no compunctions about putting pressure on business firms, but prefers to handle this sensitive area himself, arguing somewhat disingenuously that contributions to his Committee are tax-deductible while these to the Association are not.

5. Yeoh's Committee receives no government financial assistance beyond a one-shot S\$ 5,000 grant last year. Its main problem is the basic one of finding jobs. (There are currently eight ex-detainees for whom the Committee has not been able to find employment.) Most ex-detainees are poorly educated and largely unskilled. The Barisan has its share of intellectuals, but these are not the ones who recant. Since political detainees receive better care than common prisoners, it is not uncommon for a detainee to live better in prison than in a hand-to-mouth existence outside. Another problem is criticism concerning the assistance provided ex-detainees in finding employment at a time when jobs are at a premium everywhere. Even PAP members fail to see why ex-detainees should get job preference over loyal Singaporeans.

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The Ex-Political Detainee Association

6. An "auxiliary" of the EDAC is the EPDA, whose 152-man membership includes all except a handful of the released detainees. Whereas Dr. Yeoh's committee is primarily concerned with the bread-and-butter matter of jobs and loans, the Association is largely social. It holds a general meeting and throws two parties each year, one in the Chinese New Year season and one on Singapore's Independence Day. It occasionally puts out a Chinese-language newspaper. According to the President of the Association, there is not a great deal that the Association can do on a budget of S\$ 2 per year per member. He contends, however, that the Association plays a useful psychological role, in that it provides the detainees with something to "belong" to.

Conclusion

7. If the GOS rehabilitation program has a weakness, it is probably in the area of ideology. One critic has contended that the PAP version of democratic socialism is so bland and ill-defined that a former detainee is offered no ideological alternative to Communism once he has recanted. There would appear to be some basis for this criticism, but it is difficult to fault the Singapore program on the basis of results. At the inauguration of the EDAC a police rehabilitation officer remarked that "Each time when I see the happy face of a political detainee at the time of release, a kind of unspeakable joy fills my heart." His heart should be particularly joyful at never having had to see any of their faces again.

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MALAYSIA

INTERNAL SECURITY ACT

"10. At any time after an order (of detention) has been made in respect of any person under paragraph (a) of sub-section (1) of section 8 the Minister may direct that the operation of such order be suspended subject to the execution of a bond and to such conditions-

- (a) imposing upon that person such restrictions as may be specified in the direction in respect of his activities and the places of his residence and employment;
- (b) prohibiting him from being out of doors between such hours as may be so specified, except under the authority of a written permit granted by such authority or person as may be so specified;
- (c) requiring him to notify his movements in such manner at such times and to such authority or person as may be so specified;
- (d) prohibiting him from travelling beyond the limits of the Federation or any part thereof specified in the direction except in accordance with permission given to him by such authority or person as may be so specified;
- (e) prohibiting him from addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to any organisation or association, or from taking part in any political activities;
- (f) permitting him to return to the country to which he belongs or to any other place to which he wishes to proceed provided that the Government of such place consents to receive him.

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(Malaysia)

ORDER OF DETENTION

1. That shall remain and remain within the area of Police District and shall not leave or move out of Police District without the prior permission in writing of the Officer-in-Charge of Police District;
2. that shall not change place of residence within Police District without the prior permission in writing of the Officer-in-Charge of Police District or take up residence in another Police District without the prior permission in writing of the Chief Police Officer;
3. that shall report to and sign the register in the Police Station between the hours of and on provided that where permission is granted under Condition 1 or Condition 2 for him/her -
 - (a) to leave or move out of Police District/State;
 - (b) to change place of residence within the said Police District/State or
 - (c) to take up residence in another Police District/State;
 the Officer-in-Charge of the Police District/Chief Police Officer of the State to which is restricted may vary this condition to enable to report at another Police Station more convenient to the place where is staying (Condition 1) or where resides (Condition 2);
4. In the event of being permitted temporarily to leave or move out of Police District under Condition 1 hereof, or to change place of residence within Police District, or to take up residence in another Police District, under Condition 2, all the conditions of this order shall, until varied or revoked, continue to apply to as they applied to in Police District or at former residence, as the case may be:

Provided that, during a permitted temporary absence from Police District under Condition 1 or in the case of a permitted change of residence to another Police District under Condition 2, the Police Station at which shall report and sign the register under Condition 3 shall be such as may be specified by the Police Officer granting the permission.
5. that shall remain within house between the hours of and every day;
6. that shall not address public meetings or hold office in, or take part in the activities of or act as adviser to any trade union or political party, or take part in any political activity other than voting in an election for which is eligible to vote;
7. that shall not knowingly associate with any person who is a detainee, or any ex-detainee who is released on a Suspended Order of Detention or who has been released unconditionally. ("Associate" means to live in the same premises with, to converse with, to correspond with or to have any form of contact with);
8. that shall enter into a bond in the sum of Dollars only in surety/advances for the due compliance of the above-said conditions.

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11 July 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Trial of Members of "People's Alliance of National, Democratic and Peace Forces"

REF : (A) State Telegram 198939 (10 July 1968)
(B) Embassy Telegram 32349 (10 July 1968)

1. References discuss the trial in absentia of ten members of subject Alliance, scheduled to take place 12 July 1968 before the III Corps Military Field Court in Saigon.

2. I have talked today with the Deputy Director of the Directorate of Military Justice, Ministry of Defense, which has cognizance of the military courts. He affirmed that the trial has been ordered to take place. The case arrived in the normal course of business in the form of a Criminal Investigation Report from the National Police. This was processed in the usual fashion at the Directorate of Military Justice, legal basis for prosecution was found, and the Order for Trial was sent to the then Commander of III Corps, General Le Nguyen Khang, who signed it, thus placing the case on the agenda for trial. It is not known with whom General Khang may have talked prior to signing the Order for Trial.

3. The accused are charged under Decree-Law No. 4165 of 19 July 1965, Articles 14, 17 and 18. Article 14 prescribes the death penalty for joining a communist organization or collaborating with the communists, to bear arms against the Republic of Vietnam. Article 17 prescribes hard labor for a term of years for described pro-communist activity, including pro-communist neutralism. Article 18 provides for dissolution of organizations which violate Article 17. (See Handbook - National Security, December 1967, pp. 7-8 and 49-50.)

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[Redacted Signature]

Legal Counsel

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6 July 1968

MEMORANDUM FOR THE RECORD

SUBJECT: Detention Laws and Procedures - Ideas from Malaysia

1. During the 'Emergency' in Malaya which ended officially in 1960, the British faced a Communist insurgency, similar in many ways and dissimilar in others to that in Vietnam. The British authorities did develop a systematic body of laws, regulations and procedures for dealing with the situation. Their efforts were successful. Fortunately, the new countries of Malaysia and Singapore have retained the legal mechanisms inherited from the British. These have stood them in good stead in the continuing task of controlling Communist subversion, and were even of use in the recent 'Confrontation' with Indonesia.

2. The Constitution of the Federation of Malaysia provides for the proclamation of a state of emergency by the Chief of State where a grave emergency threatens the security of the country. Special law making powers are given to the Chief of State and to the Parliament in such case. The Constitution also gives the Parliament special authority to legislate in the field of internal security where Parliament finds that action has been taken by a substantial body of persons which is prejudicial to the security of Malaysia or which causes a substantial number of citizens to fear organized violence against persons and property.

3. Unfortunately, the new Constitution of the Republic of Vietnam has no specific provision like those described above. A major legislative and political effort would be necessary to amend the Constitution and to pass a comprehensive system of internal security laws and regulations. It will no doubt be necessary, instead, to construe the Constitution in such a way that the existing Decrees, Decree-Laws and special institutions and procedures established pursuant thereto will continue in force until such time as they are repealed, superseded or nullified by effective legislative, executive or judicial action. (See Handbook -- National Security (Dec 1967) page 5, para 3.)

4. Malaysia has enacted a comprehensive system of internal security laws and regulations, pursuant to the Constitutional provision described above. At the present time, it would be

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beyond the legislative, police and judicial capability of Vietnam to enact and administer a similar system. However, a brief review of the provisions concerning "preventive detention" will be useful.

5. If the Chief of State "is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof, it is necessary so to do, the Minister (of Home Affairs) shall make an order directing that such person be detained for any period not exceeding two years." Instead of directing detention, the Minister's order may impose restriction on the person as to residence, activities, employment and travel.

6. The detainee must be informed of the grounds of his detention and be given an opportunity to make representations against the detention order to the Advisory Board. He has the right to be represented by counsel of his own choice. The three man Board is presently constituted of retired men of appropriate stature who have no active occupation. It is appointed by the Chief of State. The Advisory Board must hear the case within three months. After the hearing it advises the Chief of State of its opinion as to continuation of the detention order. In practice, the opinions of the Board are almost invariably followed.

7. The law requires that every detention order be reviewed at least each six months by the Advisory Board and that a report and recommendations be made to the Minister.

8. The Minister may release a detainee "on conditions", that is, with restrictions as to residence, employment or activities. This is normally done, on recommendation of the Advisory Board, where it appears that the detainee can be rehabilitated as a peaceful citizen. The police Special Branch in the District concerned is charged with monitoring the progress of the ex-detainee and his compliance with the conditions.

9. The above discussion concerns preventive detention of persons deemed likely to act in a manner prejudicial to the national security. Where there is sufficient evidence of the commission of an offense, trial is had in the regular civil courts. If such evidence is developed while a person

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is in preventive detention, he may be tried and sentenced if guilty; preventive detention is no impediment to trial on criminal charges. Military Courts are not used in Malaysia for the trial of civilians accused of internal security offenses. However, they were so employed for a brief time at the close of World War II following the Japanese occupation.

10. A police officer may arrest without a warrant, and hold for investigation, any person suspected of the commission of an offense against the national security or in respect of whom there appear to be grounds for preventive detention. Continued detention beyond 24 hours must be authorized by an Assistant Superintendent of Police, and detention beyond 48 hours for investigation purposes may be authorized by a Superintendent of Police, for an additional period not exceeding 28 days. Thus, a suspect may be held a total of 30 days during investigation.

11. The investigative work on the cases of civilian security suspects is done by the Police Special Branch, both regarding original detention and periodic review of the cases of persons in detention. The Special Branch makes its recommendation as to disposition of the case.


12. From the foregoing discussion, it is evident -- and somewhat reassuring -- that the Provincial Security Committee system and the procedures for arrest and temporary custody of civilian security suspects employed in Vietnam are essentially similar in concept to the Advisory Board and the arrest procedures found in Malaysia. (See Handbook -- National Security (Dec 1967) pp 11-16).

13. When circumstances allow, it will certainly be desirable for Vietnam to recodify its laws protecting the national security and to issue detailed and comprehensive regulations and procedures. The GVN has developed drafts of a new Criminal Code and a new Code of Criminal Procedure. However, these are inadequate in that they do not make provision for emergency enactments and procedures to deal with

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insurgency. (See paragraphs 2 and 3 above). Hence, the availability of preventive detention by Security Committees, for example, is thrown in doubt, as are the present procedures which allow temporary custody of such persons for up to one month during investigation.


Legal Counsel

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